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Supreme Court, U.S.
FILED

01-161 JUL 26 2001

No._____ OFFICE OF

In The

Supreme Court of the United States

NEIGE DIEHL, *pro se*

Appellant/Defendant

vs.

COUNTY OF AUGUSTA, *et al,*

Appellees/Plaintiff

On Petition For A Writ Of Certiorari
To The Supreme Court Of Virginia

PETITION FOR WRIT OF CERTIORARI

NEIGE DIEHL, *pro se*
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23 pp

QUESTIONS PRESENTED

WHETHER THE SUPREME COURT OF VIRGINIA ABUSED IT'S DISCRETIONS IN DENYING DIEHL, (APPELLANT) HIS U.S. CONSTITUTIONAL RIGHTS AND VIRGINIA CONSTITUTIONAL RIGHTS TO A JURY TRIAL AND WAS ARTICLE XXX OF THE AUGUSTA COUNTY ZONING ORDINANCE OF VIRGINIA PROPERLY APPROVED (THERE WAS NO VALID SIGNATURE OR DATE) AND DOES THE COURT HAVE THE RIGHT TO COMPELL THE APPELLANT TO DISPOSE OF HIS PROPERTY WITHOUT JUST COMPENSATION AND WITHOUT A JURY TRIAL AND DOES THE APPELLANT HAVE VESTED RIGHTS AND WAS CANON 3, OF THE CODE OF VIRGINIA VIOLATED AND DID THE COURT EXCEED IT'S AUTHORITY WHEN IT HANDED DOWN IT'S INJUNCTION ORDER DATED 11-17-2000, WITHOUT A JURY TRIAL AND WAS THE INJUNCTION ORDER MADE UPON APPLICATION OF ERRONEOUS PRINCIPLES OF LAW AND DOES THE JUDGE OF THE COURT HAVE THE RIGHT TO TAKE THE ATTORNEY AND WITNESS OUT TO VIEW THE PROPERTY IN VIOLATION OF THE CODE OF VIRGINIA, CODE NO. 8.01-376, TO COLLECT EVIDENCE?

PARTIES TO PROCEEDING

NEIGE DIEHL, *pro se*, Appellant/Defendant
744 Jefferson Highway
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vs.

COUNTY OF AUGUSTA, VIRGINIA, *et al*
Appellee/Plaintiff
Edward A. Plunkett, Jr., Attorney for Augusta County
Augusta County Government Center
P. O. Box 590
Verona, Virginia 24482
Phone: (540) 245-5017

And

MR. DALE COBB, *pro se*, Appellee/Plaintiff
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Verona, Virginia 24482
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NOTATION

SUPREME COURT RULE 29.6

THERE ARE NO CORPORATIONS INVOLVED

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

NEIGE DIEHL, appellant respectfully petition this honorable court for a writ of certiorari to review the judgment of the Supreme Court of Virginia, Case No. 010328, dated the 29th day of May, 2001, denying the appellant his petition for appeal, affirming the Circuit Court of Augusta County, Virginia, injunction order dated 11-17-2000, Case No. CH00000158.

JURISDICTION

This honorable Court's jurisdiction is invoked under Title 28, U.S.C., Paragraph 1257 (a) and pursuant to Supreme Court Rule 10(b) and (c) and Rule 13(1). The Supreme Court of Virginia, entered it's judgment on May 29th, 2001. The court refuses the petition for appeal. Record No. 010328 and Circuit Court No. CH00000158 pursuant to Rule 13(1) and 13(3) of the Supreme Court rules, this petition is timely filed within 90 days after the denial of the petition for appeal filed by the appellant.

U.S. CONSTITUTIONAL PROVISION

AMENDMENT VI

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

AND

AMENDMENT VII

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

ALSO

AMENDMENT XIV

STATEMENT OF THE CASE

On April 18, 2000, this suit was brought by the County of Augusta Virginia against Diehl, appellant of running a junk yard and a salvage yard under Article XXX in violation of the zoning ordinance of Augusta County, Virginia and on 5-5-2000, Diehl appellant, filed a reply to bill of complaint and a cross bill and in the cross bill Diehl, appellant, denies that he has a junk yard or salvage yard that is in violation of the zoning ordinance of Augusta County, Virginia, and appellant asked for strict proof and that Diehl, appellant, does have items stored outside, however, it is not junk and that Diehl, appellant, reserves his vested rights and grandfather rights and his right to a jury trial and his right to have a court reporter and his right for a change of venue: See Circuit Court records Pages 9, 10, 111.

A Bill of Discovery was filed on 6-12-2000; (A) What was the date that Article XXX took effect; and (B) A true copy of the public notice for Article XXX; and (C) A true copy of the public hearing when Article XXX was approved and (D) Who approved Article XXX of the zoning ordinance of Augusta County of Virginia?

A response to Bill of Discovery was filed on June 28, 2000: (A) Effective date of Article XXX was October 1, 1995, and (B) True copies of the newspaper notice was attached here to as Exhibit "A" and (C) True copies of the minutes of the Board of Supervisors meeting dated January 31, 1995, was attached here to as "Exhibit B."

Praecipe was filed on July 6, 2000, for the motion day of the court to be heard on July 18, 2000, to set a trial date.

On July 18, 2000, a trial date was set for September 6, 2000, for 2:00 in the afternoon.

Summons papers were filed on August 25, 2000, by Diehl.

Instructions were filed September 1, 2000, by Diehl.

Court hearing September 6, 2000. At this hearing were the Honorable Judge Wood, and Attorney Edward A. Plunkett, Jr., and Mr. Dale Cobb, and Mr. Tom Bailey and Diehl and others. At the hearing Attorney Edward A. Plunkett, Jr., Attorney for Appellees (Augusta County of Virginia) made a motion to file an amended bill of complaint, and Judge Wood, agreed. And Diehl, appellant objected to the hearing because there was no jury, and no court reporter. Attorney Edward A. Plunkett, Jr., for Appellees, made a motion to view the property. Diehl, appellant, objected to Attorney Edward A. Plunkett, Jr., and Mr. Dale Cobb and Mr. Tom Bailey, viewing the property to collect evidence. Judge Wood, told Diehl, appellant that if he wanted a court reporter, he (Diehl) would have to get his own reporter. And Judge Wood, said that as soon as the jury was sworn in they were going to view the property. Then Judge Wood, Attorney Edward A. Plunkett, Jr., and Diehl, went to Judge Wood's chambers to set a new hearing date, and Judge Wood went to the phone book and gave Diehl a list of court reporters that the court approved of and a new hearing date was set for November 6, 2000, for 9:00 in the morning.

Court hearing November 6, 2000. There was no jury at this hearing, however, there was a court reporter, Mr. Kevin Lacy, who was working for Mrs. Shiflett, president of Statewide Court Reporters of Charlottesville, Va., (Phone: (804) 295-0005, who Diehl had to hire, according to Judge wood, and Judge Wood and Attorney Edward A. Plunkett, Jr., and Mr. Dale Cobb and Mr. Tom Bailey, went to view the property which violates 8.01-376, of the Code of Virginia, only the Judge and Jury should view the property, not the appellees and their witnesses, Diehl did not go. This was Diehl's request.

See Canon 3. Rules of the Supreme Court of Virginia. Diehl, appellant objected to Judge Wood hearing this case because Judge Wood is biased and prejudiced and is not impartial and fair. "***E. Disqualification — (1) A Judge shall disqualify himself or herself in a proceeding in which the Judge's impartiality might be questioned, ***."

REASON FOR GRANTING THE WRIT

The Virginia Supreme Court and the Circuit Court for Augusta County Virginia, abused its discretion and the applicable laws of the land by not granting Diehl, appellant, a jury trial and by using erroneous application of the laws of the land, and by so doing has deprived the appellant the lawful use of his land and property.

ERRORS
ASSIGNMENTS OF ERROR

The Circuit Court erred when it did not grant the appellant a jury trial, when appellant Diehl, had requested a jury trial. And appellant objected to any of his rights being denied. See the Circuit Court Records, Pages 10, 111, 112, 114, 115.

Constitution of the United States, Amendment VI: "Right to speedy trial, witnesses, etc., in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation. To be confronted with the witnesses against him. To have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defense."

Constitution of the United States, Amendment VII: "Trial By Jury Civil Cases. "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall

be otherwise reexamined in any court of the United States, than according to the rules of the common law."

Constitution of the United States, Amendment XIV: "Citizenship rights not to be abridged by states. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state where in they reside. No state shall make or enforce any law, which shall abridge the privilege or immunity of citizens of the United States. Nor shall any state deprive any person of life, liberty, or property, without due process of law. Nor deny to any person within its jurisdiction the equal protection of the law."

Constitution of Virginia Article 1, Paragraph 8. Criminal Prosecution, "That in criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, and to call for evidence in his favor, and he shall enjoy the right to a speedy trial, by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty. He shall not be deprived of life or liberty, except by the law of the land or the judgment of his peers, nor be compelled in any criminal proceeding to give evidence against himself, nor to be put twice in jeopardy for the same offense." See subsection IX, Right to Jury Trial.

Constitution of Virginia, Article 1, Paragraph 11. Due Process of Law. Obligation of Contracts. Taking of Private Property. Prohibited discrimination. Jury trial in civil cases.

"That no person be deprived of his life, liberty, or property without due process of law. That the General Assembly shall not pass any law impairing the obligation of contracts, nor any law whereby private property shall be taken or damaged for public use, without just compensation, the term "Public Use" to be defined by the General Assembly. And that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sec, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination."

"That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five."

See Subsection (1) Due Process. "This section provides due process protection to one unlawfully or improperly deprived of property, whether real or personal and the deprived person may enforce his constitutional right to compensation in a common-law action. Gram v. Mitchell, 529 F. Supp. 622 (E. D. Va. 1982)."

For the reasons stated above, no jury trial and no just compensation, the appellant Diehl, prays that the injunction order dated 11-17-2000, be dismissed with prejudice.

ERROR

The Circuit Court of Augusta County Virginia, erred when the court did not take notice that the Augusta County zoning ordinance of Virginia had not been approved. There are no valid signatures and no valid date affixed to the ordinance as required. See court records, Exhibit "B", pages 55 and 95. Neither the chairman or the county administrator approved ordinance, See court records Pages 9, 55, 95. Exhibit "A1".

For the reasons stated above, no valid signatures and no valid date the appellant Diehl, asks that the zoning ordinance be declared null and void.

ERRORS
VESTED RIGHTS
GRANDFATHER CLAUSE

The Circuit Court errored when the court ignored appellant (Diehl's) vested right request and the court handed down it's injunction order of 11-17-2000, and by so doing the appellant (Diehl) is denied his vested rights under the law and is being denied the use and enjoyment of his property without just compensation and a jury trial.

See Virginia Code 15.2-2208, See Subsection **********. "To establish a valid use, it had to be a lawful use existing on the effective date of the ordinance and continuing since that time not in conformance with the ordinance. Dick Kelly enter v. City of Norfolk, 243 Va. 373, 416 S. E. 2nd 680 (1992) decided under prior law."

See Blacks Law Dictionary, Sixth Edition. Vested Rights. In constitutional law, right which have so completely and definitely accrued to or settled in a person that they are not subject to be defeated or cancelled by the act of any other private person, and which it is right and equitable that the government should recognize and protect, as being lawful in themselves, and settled according to the then current rules of law, and of which the individual could not be deprived arbitrarily without injustice, or of which he could not justly be deprived otherwise than by the established methods of procedure and for the public welfare. Such interest as cannot be interfered with by retrospective laws. Interests which it is proper for state to recognize and protect and of which individual cannot be deprived arbitrarily without injustice. American States Water Service Co. of California v. Johnson, 31 Cal. App. 2d 606, 88 P 2d, 770, 774, immediate or fixed right to present or future enjoyment and one that does not depend on an event that is uncertain. A right complete and consummated of such character that it cannot be divested without the consent of the person to whom it belongs, and fixed or established, and no longer open to controversy. State Ex Rel Milligan v. Ritter's Estate, Ind. App., 46 N. E. 2d 736, 743."

See Article 1, Paragraph 11, of the Constitution of Virginia, Subsection 1. Due Process. "Property interests which may ripen into vested rights. The due process clause of the Virginia Constitution protects not only rights that have vested, but also substantive property interest, which may ripen into vested rights. School Bd. v. United States Gypsum Co. 234 Va. 32, 360 S. E. 2d 325 (1987).

For the legislature to divest one of a vested right under a decree is to deprive such person of his property without due process of law. Kennedy Coal Corp. v. Buckhorn Coal Corp., 140 Va. 37, 124, S. E. 482 (1924).

See Article 1, Paragraph 11 of the Constitution of Virginia, Subsection 2, Impairment of Contracts. "A vested right is as a right so fixed that it is not dependent on any future act, contingency or decision to make it more secure, tested by this definition, parties in favor of whom a decree has been rendered have no vested right at the time of the rendition of the decree. Their right is not fixed in the sense that it is settled. It is an inchoate right, which becomes vested upon the happening of one of two events, Vix., and affirmance of the decree or the expiration of the period of time in which to take an appeal. Kennedy Coal Corp. v. Buckhorn Coal Corp., 140 Va. 37, 124 S. E. 2482 (1924)."

15.2-2208. See Subsection "Invocation of vested rights theory to support valid nonconforming use was unavailable to landowner as a defense to action under this section where the use in violation of the certificate of occupancy was unlawful from its inception and remained so. To establish a valid use, it had to be a lawful use existing on the effective date of the ordinance and continuing since that time not in conformance with the ordinance. Dick Kelly Enters. v. City of Norfolk, 243 Va. 373, 416 S. E. 2d 680 (1992) (Decided under prior law)." See court record page 117.

Appellant Diehl, started to buy the 4.333 acres on 4-23-1957, see deed book 428, page 470, and have had outside storage all the time, up to the present, and had things stored on the 23.960 acres from 1950 to the present.

The effective date of Article XXX of the zoning ordinance of Augusta County, Virginia was October 1, 1995. See page 37 of the court records. Also see pages 8, 30, 31, 115, 116, 117, 118, 119, 121.

ERROR

The circuit court errored by not granting a change of venue when appellant, Diehl, requested a change of venue due to the fact that this court is prejudiced and biased. See Circuit Court record Page 9. See Exhibits A2, and A3.

At the circuit court hearing of 11-6-2000, appellant Diehl, brought to the court's attention Canon 3, Rules of the Supreme Court of Virginia. Appellant asked Judge Wood, to disqualify himself and step aside, and Judge Wood did not step aside. "E. Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (A) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding." See transcript pages 4 through 14.

Judge Wood knew or should have know that appellant had asked for a change of venue on 5-5-2000. See Circuit Court record Page 9.

For the reasons stated above appellant prays that this honorable court will grant a new trial and a jury trial and a change of venue.

PRAYER

I, Neige Diehl, pray that this honorable court will overturn the Virginia Supreme Court's judgment denying the appellant's petition for appeal and overturning the Circuits Court of Virginia injunction order dated 11-17-2000, Case No. CH00000158 and Supreme Court Case No. 010328, and throw the case out of court with prejudice or send the cast back for a jury trial and a change of venue and for any other relief that his honorable court deems just and proper.

Cordially,

Neige Diehl, *pro se*
744 Jefferson Highway
Staunton, Virginia 24401-6642
Phone: (540) 886-3986

ORDER

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday *the* 29th *day of* May, 2001.

Neige Diehl, Appellant,

Against Record No. 010328
Circuit Court No. CH00000158

County of Augusta, et. al, Appellees.

FROM THE CIRCUIT COURT OF AUGUSTA COUNTY

Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:
David B. Beach, Clerk

By: ***Wendy L. Tuck***
Deputy Clerk

ORDER

VIRGINIA: IN THE CIRCUIT COURT OF AUGUSTA COUNTY

COUNTY OF AUGUSTA, VIRGINIA

V. **INJUNCTION ORDER**

NEIGE E. DIEHL

This cause came to be heard upon the prayer for an injunction contained in complainant's amended bill, upon the appearance of the respondent, Neige E. Diehl, pro se, and upon the evidence heard ore tenus on November 6, 2000, and was argued by counsel.

Upon consideration whereof, it is hereby ORDERED, ADJUDGED and DECREED that the respondent, his licensees, agents, tenants, successors and assigns, be and they hereby are, restrained and enjoined from future efforts to use any of the parcels of real estate owned by him described as (1) Tax Map 66-105 containing 2.090 acres; (2) Tax MP 66-105A containing 2.243 acres and (3) Tax Map 66-100 containing 23.960 acres in said bill of complaint as an illegal junk or salvage yard in violation of the zoning ordinances of Augusta County, Virginia. The respondent shall have until 5:00 p.m. on April 1, 2001, to remove the accumulation of junk and inoperable vehicles and other junk and debris, including motor vehicle parts, building materials and other miscellaneous materials from the premises that may be in violation of the zoning ordinances of the County.

This injunction shall remain in effect until dissolved by further order of this Court. The Clerk of this Court shall have this Order served on the respondent. There being nothing further remaining to be done in this cause, it shall be removed from the docket of this Court.

ENTER:

TH Wood
Judge

DATE:

11/17/00